

Senate Study Bill 1035 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON CHAPMAN)

A BILL FOR

1 An Act modifying provisions relating to the regulation and
2 sale of certain fireworks, making penalties applicable, and
3 including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 9C.1, subsection 3, Code 2019, is amended
2 to read as follows:

3 3. The provisions of this chapter shall not be construed
4 to apply to persons selling at wholesale to merchants, nor to
5 transient vendors of drugs, nor to persons running a huckster
6 wagon, or selling or distributing livestock feeds, fresh meats,
7 fish, fruit, or vegetables, nor to persons selling consumer
8 fireworks, display fireworks, or novelties, as those terms are
9 defined in section 727.2, nor to persons selling their own work
10 or production either by themselves or employees.

11 Sec. 2. Section 100.19, Code 2019, is amended by adding the
12 following new subsections:

13 NEW SUBSECTION. 3A. a. The state fire marshal shall
14 approve or deny a completed application for a consumer
15 fireworks seller license, submitted on or before April 30, no
16 later than the following June 1 for an application to sell
17 consumer fireworks at a permanent building, or no later than
18 the following June 13 for an application to sell consumer
19 fireworks at a temporary structure.

20 b. If the state fire marshal fails to act on a completed
21 application for a license within the applicable time frame as
22 specified in paragraph "a", the application shall be deemed
23 approved. This paragraph shall not restrict the authority of
24 the state fire marshal to revoke a license approved pursuant to
25 this paragraph for any intentional violation of this section,
26 in accordance with subsection 6.

27 NEW SUBSECTION. 7A. a. The state fire marshal shall have
28 sole authority to require or authorize inspections relating to
29 consumer fireworks seller licensing pursuant to this section.
30 A city or county shall not have the authority to require or
31 authorize any inspection relating to consumer fireworks seller
32 licensing, provided, however, that the state fire marshal may
33 authorize a city or county employee to conduct an inspection on
34 behalf of the state fire marshal.

35 b. Any inspection required or authorized by the state fire

1 marshal relating to consumer fireworks seller licensing shall
2 be paid from moneys deposited in the consumer fireworks fee
3 fund created in subsection 7, paragraph "a", regardless of
4 whether the inspection is conducted by the state fire marshal
5 or any other person authorized by the state fire marshal.

6 Sec. 3. Section 100.19, subsection 4, Code 2019, is amended
7 by adding the following new paragraph:

8 NEW PARAGRAPH. *d.* Prohibit a retailer or community group
9 issued a license pursuant to this section to sell consumer
10 fireworks, as described in APA 87-1, chapter 3, in any
11 residential zone or district.

12 Sec. 4. NEW SECTION. **100.19B Fireworks regulation —**
13 **uniform application.**

14 1. In order to provide for the uniform application of
15 the provisions of sections 100.19, 100.19A, 727.2, and any
16 other provision relating to the regulation of fireworks within
17 this state, it is intended that the sole and only regulation
18 of fireworks in the state, including consumer fireworks,
19 display fireworks, and novelties, shall be those enacted by
20 the general assembly and attendant rules allowed thereunder
21 by the division of the state fire marshal. A municipality,
22 county, or other governmental unit within this state shall not
23 make any law, ordinance, or regulation relating to consumer
24 fireworks, display fireworks, or novelties, except as provided
25 in subsection 3. All such laws, ordinances, or regulations
26 existing on the effective date of this Act shall be or become
27 void, unenforceable, and of no effect.

28 2. A municipality, county, or other governmental unit
29 that adopts or enforces any law, ordinance, or regulation in
30 violation of this section shall be liable for court costs,
31 expenses, and reasonable attorney fees incurred by a prevailing
32 party bringing a claim against the municipality, county, or
33 other governmental unit based on the adoption or enforcement of
34 the law, ordinance, or regulation.

35 3. *a.* This section shall not limit the authority of

1 a city or county to prohibit or limit the use of consumer
2 fireworks pursuant to section 331.301, subsection 17, or 364.2,
3 subsection 6, or to grant permits for the display of display
4 fireworks pursuant to section 727.2, subsection 2, paragraph
5 "a".

6 b. This section shall not limit the authority of the
7 department of natural resources to issue permits for the use
8 of consumer fireworks and display fireworks in state parks and
9 preserves pursuant to section 461A.42, subsection 2.

10 4. For purposes of this section, "consumer fireworks",
11 "display fireworks", and "novelties" means the same as those
12 terms are defined in section 727.2.

13 Sec. 5. Section 331.301, subsection 17, Code 2019, is
14 amended to read as follows:

15 17. The board of supervisors may by ordinance or resolution
16 prohibit or limit the use of consumer fireworks ~~or display~~
17 ~~fireworks~~, as described in section 727.2, ~~if the board~~
18 ~~determines that the use of such devices would constitute a~~
19 ~~threat to public safety or private property, or if the board~~
20 ~~determines that the use of such devices would constitute a~~
21 ~~nuisance to neighboring landowners~~ on dates and at times that
22 are more stringent than the limitations described in section
23 727.2, subsection 4, provided, however, that the board of
24 supervisors shall not prohibit or limit the use of consumer
25 fireworks on July 4 as otherwise provided in section 727.2,
26 subsection 4.

27 Sec. 6. NEW SECTION. 335.2A **Sale of consumer fireworks —**
28 **limitation.**

29 A county shall not adopt or enforce any ordinance under
30 this chapter to regulate, restrict, or prohibit the location
31 of permanent buildings or temporary structures used for the
32 sale of consumer fireworks pursuant to section 100.19, in any
33 location zoned for commercial or industrial purposes.

34 Sec. 7. Section 364.2, subsection 6, Code 2019, is amended
35 to read as follows:

1 6. A city council may by ordinance or resolution prohibit
2 or limit the use of consumer fireworks, ~~display fireworks,~~
3 ~~or novelties,~~ as described in section 727.2, on dates and at
4 times that are more stringent than the limitations described
5 in section 727.2, subsection 4, provided, however, that a
6 city council shall not prohibit or limit the use of consumer
7 fireworks on July 4 as otherwise provided in section 727.2,
8 subsection 4.

9 Sec. 8. Section 414.1, subsection 1, Code 2019, is amended
10 by adding the following new paragraph:

11 NEW PARAGRAPH. c. A city shall not adopt or enforce any
12 regulation or restriction under this chapter to regulate,
13 restrict, or prohibit the location of permanent buildings or
14 temporary structures used for the sale of consumer fireworks
15 pursuant to section 100.19, in any location zoned for
16 commercial or industrial purposes.

17 Sec. 9. Section 727.2, subsection 4, paragraph b, Code 2019,
18 is amended to read as follows:

19 b. A person shall not use or explode consumer fireworks at
20 times other than between the hours of 9:00 a.m. and 10:00 p.m.,
21 except that on the following dates consumer fireworks shall not
22 be used at times other than between the hours specified:

23 (1) Between the hours of 9:00 a.m. and 11:00 p.m. on July 4
24 and the Fridays and Saturdays ~~and Sundays~~ immediately preceding
25 and following July 4.

26 (2) Between the hours of 9:00 a.m. on December 31 and 12:30
27 a.m. on the immediately following day.

28 (3) Between the hours of 9:00 a.m. and 11:00 p.m. on the
29 Fridays and Saturdays ~~and Sundays~~ immediately preceding and
30 following December 31.

31 Sec. 10. Section 727.2, subsection 4, Code 2019, is amended
32 by adding the following new paragraph:

33 NEW PARAGRAPH. *0c.* A city or county may prohibit or limit
34 the use of consumer fireworks on dates and at times that are
35 more stringent than the limitations described in paragraphs "a"

1 and "b", except for times applicable to July 4, pursuant to
2 section 331.301, subsection 17, or 364.2, subsection 6.

3 Sec. 11. EFFECTIVE DATE. This Act, being deemed of
4 immediate importance, takes effect upon enactment.

5 EXPLANATION

6 The inclusion of this explanation does not constitute agreement with
7 the explanation's substance by the members of the general assembly.

8 This bill modifies provisions relating to the regulation and
9 sale of certain fireworks.

10 Current Code chapter 9C requires persons bringing any goods,
11 wares, or merchandise into Iowa with the intent to sell such
12 goods, wares, or merchandise to obtain a transient merchant
13 license, unless otherwise exempted from licensure. The bill
14 provides that these licensure requirements shall not apply
15 to persons selling consumer fireworks, display fireworks, or
16 novelties, as those terms are defined in Code section 727.2.

17 Current Code section 100.19 requires the state fire
18 marshal to regulate the sale of consumer fireworks in Iowa
19 by establishing licensure requirements and issuing consumer
20 fireworks seller licenses to retailers and community groups.
21 The bill requires the state fire marshal to approve or deny a
22 completed application for a consumer fireworks seller license,
23 submitted on or before April 30, no later than the following
24 June 1 for an application to sell at a permanent building, or
25 no later than the following June 13 for an application to sell
26 at a temporary structure. If the state fire marshal fails
27 to act on a completed application within the applicable time
28 frame, the application shall be deemed approved. However, the
29 state fire marshal may revoke an approved application for any
30 intentional violation of Code section 100.19 in accordance with
31 that Code section.

32 The bill provides that the state fire marshal shall adopt
33 rules to prohibit the sale of consumer fireworks in any
34 residential zone or district.

35 The bill provides that the state fire marshal shall have the

1 sole authority to require or authorize inspections relating
2 to consumer fireworks seller licensure. A city or county
3 shall not have the authority to require or authorize any such
4 inspection, but the state fire marshal may authorize a city or
5 county employee to conduct an inspection on behalf of the state
6 fire marshal. The bill provides that any inspection required
7 or authorized by the state fire marshal shall be paid from
8 moneys deposited in the consumer fireworks fee fund created in
9 Code section 100.19(7)(a), regardless of whether the state fire
10 marshal or another authorized person conducts the inspection.

11 The bill provides that the sole and only regulation of
12 fireworks in Iowa, including consumer fireworks, display
13 fireworks, and novelties, as those terms are defined in Code
14 section 727.2, shall be those enacted by the general assembly
15 and any rules provided by the division of the state fire
16 marshal. A municipality, county, or other governmental unit in
17 Iowa shall not make any law, ordinance, or regulation relating
18 to such fireworks, except as specified in the bill. All such
19 regulations adopted or enforced by a municipality, county, or
20 other governmental unit in existence on the effective date of
21 the bill shall become void and unenforceable. If a claim is
22 brought against a municipality, county, or other governmental
23 unit based on the adoption or enforcement of a regulation in
24 violation of the bill, the municipality, county, or other
25 governmental unit shall be liable for court costs, expenses,
26 and reasonable attorney fees incurred by a prevailing party.

27 Current law allows a county to prohibit or limit the use
28 of consumer fireworks or display fireworks under specified
29 circumstances. Current law also allows a city to prohibit or
30 limit the use of consumer fireworks, display fireworks, or
31 novelties. The bill modifies these provisions by providing
32 that a city or county may by ordinance or resolution prohibit
33 or limit the use of consumer fireworks on dates and at times
34 that are more stringent than the limitations described in Code
35 section 727.2(4), except for times applicable to July 4.

1 The bill provides that a city or county shall not adopt or
2 enforce any zoning regulation under Code chapter 335 or 414
3 to regulate, restrict, or prohibit the location of permanent
4 buildings or temporary structures used for the sale of consumer
5 fireworks pursuant to Code section 100.19, in any location
6 zoned for commercial or industrial purposes.

7 Current Code section 727.2(4) authorizes the use of consumer
8 fireworks on certain days and at certain times, including the
9 Saturdays and Sundays immediately preceding and following
10 July 4 and December 31. The bill replaces "Saturdays and
11 Sundays" with "Fridays and Saturdays". A person who violates
12 Code section 727.2(4) commits a simple misdemeanor. A simple
13 misdemeanor is punishable by confinement for no more than 30
14 days or a fine of at least \$65 but not more than \$625 or by
15 both. However, a court shall not order imprisonment for a
16 violation of Code section 727.2(4).

17 The bill takes effect upon enactment.